

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

---

COMPETITIVE PRODUCT PRICES  
PARCEL SELECT CONTRACT 44

---

Docket No. MC2021-42

---

COMPETITIVE PRODUCT PRICES  
PARCEL SELECT CONTRACT 44 (MC2021-42)  
NEGOTIATED SERVICE AGREEMENT

---

Docket No. CP2021-43

---

**MOTION BY STRATEGIC ORGANIZING CENTER REQUESTING LEAVE TO REPLY  
TO RESPONSES OPPOSING SOC'S MOTION FOR ACCESS TO NON-PUBLIC  
MATERIALS UNDER PROTECTIVE CONDITIONS**  
(September 2, 2022)

---

The Strategic Organizing Center (SOC) respectfully submits this Motion for Leave to Reply, in the form of the accompanying Proposed Reply, to the responses of Amazon.com Services LLC (Amazon), the United States Postal Service (Postal Service or USPS), and the Parcel Shippers' Association (PSA) (collectively Responses) filed on August 22, 2022, opposing SOC's motion filed August 17, 2022 requesting access to non-public information for its counsel to use in initiating a proceeding before the Commission (August 17, 2022 Motion).

SOC's August 17, 2022 Motion was filed pursuant to the Postal Regulatory Commission's (PRC or Commission) Order No. 6189, which addressed SOC's May 12,

2022 Motion (May 12, 2022 Motion) filed in Docket No. CP2021-117 seeking access to the non-public sections of the main current Negotiated Service Agreement (NSA) between USPS and Amazon, and the accompanying Governor's Decision. In Order 6189, the Commission denied SOC's May 12, 2022 Motion without prejudice, suggesting that it had not been filed within the correct docket. The Order further directed SOC and USPS to meet and confer to narrow the differences between them and to submit a Joint Statement on the results of this process. It also granted SOC leave to refile a Motion for Access within the correct dockets following the submission of the Joint Statement.

On August 5, 2022, SOC and USPS filed the requested Joint Statement within Dockets MC2021-115 and CP2021-117, and on the same day SOC filed a Supplemental Submission within these dockets requesting immediate access to the requested documents on the grounds that USPS waived objections to disclosure because it failed to meaningfully meet and confer as ordered by Commission (SOC Submission, filed herewith).

SOC respectfully requests that the Commission exercise its discretion to grant SOC leave to file a reply to the Responses in the form of the Proposed Reply, filed herewith, before the PRC issues its decision on the Motion and the Responses.

PRC Rule 3007.301(d) states that no reply may be filed "unless the Commission otherwise provides." The Commission has granted leave to file replies where its finds cause to do so.<sup>1</sup> SOC submits that in this case there is good cause for the Commission to provide leave for SOC to file a reply.

---

<sup>1</sup> See, e.g. Docket No. ACR2019 Order No. 4994 (Jan 30, 2019) at 2 n.5 (granting PostCom's motion for leave to reply in order to respond to new arguments raised by the USPS opposing PostCom's motion for access to non-public materials); Presiding Officer's Ruling No. C2009-1/23 (June 10, 2010) at 1 n. 3 (granting USPS motion for leave to file reply to GameFly answers to USPS motion to compel); Order No.

First, SOC's August 17, 2022 Motion is the first to ask the PRC to interpret and give effect to its 2018 rules authorizing request for access in aid of initiating a proceeding before the Commission.<sup>2</sup> The PRC's adjudication of the issue is, therefore, of significant public interest and the PRC's decision will be better informed if the Commission is fully briefed by the interested parties.

Second, the Responses oppose SOC's August 17, 2022 Motion not only on the ground that SOC's Motion purportedly fails to satisfy Commission rules on access to non-public information, but also on the grounds that the rules themselves, and/or the Commission's interpretation of them are illegitimate. The Responses are, therefore, the functional equivalent to public comments seeking changes to the PRC's extant rules which – under established Commission practice – should be fully answered and briefed by all interested parties.

Finally, the Responses raise new arguments to which SOC has not yet had the opportunity to respond, specifically:

1. Amazon's claim that the regulatory history of Rules 39 C.F.R. § 3011.300(c) and § 3011.301(b)(2)(ii) precludes their application to access to non-public information in aid of initiation of a complaint to the Commission.

---

1763 (June 26, 2013) at 5 n. 7 (allowing GameFly surreply); *id.* at 9 n. 13 (allowing USPS surreply); *see also* Presiding Officer's Ruling No. MC2004-3/2 at 5 n. 17 (granting Bank One motion for leave to file reply to reply); Presiding Officer's Ruling No. R2001-1/20 at 6 n. 9 (granting OCA request for leave to file reply to reply).

<sup>2</sup> 39 C.F.R. § 3011.300(c); 39 C.F.R. § 3011.301(b)(2)(ii).

2. Amazon's claim that applying the Commission's access rules to aiding initiation of complaints conflicts with 39 U.S.C. § 3662 and its implementing rules, and with the Federal Rules of Civil Procedure.
3. Amazon's claim that SOC's has not identified a viable cause of action against USPS because 39 U.S.C. § 3632(b)(3) authorizes the Postal Service to offer rates and terms "not of general applicability" to individual customers.
4. The opposing parties' claims that SOC is seeking to "second guess" the Commission's approval and review of the Contract.
5. The opposing parties' claims that granting access to SOC will cause severe commercial harm.
6. The opposing parties claims that the Commission cannot take account of USPS's obligations under 39 U.S.C. §§ 101(b) and 101(e) in determining whether SOC has alleged a potentially actionable complaint that "undue" preferencing has occurred under 39 § U.S.C. 403(c).
7. USPS's claim that SOC has failed to properly disclose its purported affiliations with the delivery, communications, and mailing industries.

For these reasons, SOC respectfully requests that Commission grant it leave to reply to the Responses filed in opposition to SOC's August 17, 2022 Motion.

Respectfully submitted,

DATED: September 1, 2022

THE STRATEGIC ORGANIZING CENTER

By its attorneys:

/s/ Marka Peterson  
Marka Peterson  
Attorney

/s/ George W Faraday  
George W Faraday  
Attorney

1900 L Street NW, #900  
Washington DC 20036  
(202) 721-0660 (office)  
[mpeterson@thesoc.org](mailto:mpeterson@thesoc.org)  
[gfaraday@thesoc.org](mailto:gfaraday@thesoc.org)